IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.434 OF 2005

Cambata Aviation Pvt.Ltd. ..Petitioner.

Vs.

M.D.Shirose & Ors. ..Respondents.

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Mr.Kiran S. Bapat for the Petitioner.

Mr.R.M.Joshi for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

23rd February, 2005.

P.C. :

1. Rule, returnable forthwith. Counsel appearing on behalf of Respondent No.1 waives service. By consent taken up for hearing and final disposal.

2. The First Respondent was employed by the Petitioner as a driver at the International Airport at Mumbai. The Petitioner is in the business of ground handling operations and provides services to several International Airlines including Cathay Pacific, KLM, British Airways, Swiss Air and

Gulfair. A charge sheet was issued to the First Respondent on 16th May, 1995 in which it was alleged that on 24th April, 1995 the First Respondent was on duty in the morning shift commencing from 8.00 a.m. and concluding at 4.00 p.m. Thereafter the First Respondent had continued to remain on duty on overtime from 4.00 p.m. to 4.00 a.m. the following morning. The First Respondent, it was alleged, was deputed to work on two incoming aircraft of Cathay Pacific and Lufthansa. At about 11.00 p.m. while the Co-ordinating officer by the name of Mr.S.Fernandes, was on rounds in the CAPL Parking area, he saw the workman carrying a suitcase towards a KLM Cargo Truck. The workman is alleged to have thrown the suitcase into the truck upon which Mr.Fernandes immediately rushed towards him. The nature of work of the workman did not involve carrying or loading luggage in any vehicle. On being questioned, the workman did not furnish any explanation in regard to the incident involving the suitcase upon which he was taken to the watchman's cabin. Another watchman was asked to keep watch on the suitcase which was thrown into the KLM Cargo Truck. The matter was reported to the Assistant

Manager, Traffic Department and to the police. During the course of investigation, it was found that the suitcase belonged to a passenger who had arrived on flight CX 750. On these allegations the workman was charged with having committed misconduct of theft, fraud or dishonesty in connection with the employers' business or property and the commission of an act subversive of discipline.

3. An enquiry was held on these charges during the course of which the workman was represented by a defence representative. The management, in support of these allegations, examined Mr.Sebastian Fernandes, Co-ordinating Officer in the Traffic Department, who was alleged to have apprehended the First Respondent during the course of the incident involving an attempted theft of the baggage of an incoming passenger. The witness was cross examined. On his part, the First Respondent stepped into the witness box. The enquiry officer on reviewing the evidence came to the conclusion that the finding of misconduct was established. The workman was dismissed from service.

4. A reference was thereafter made to adjudication under Section 10 of the Industrial Disputes Act, 1947. In the course of the reference the Labour Court by its award dated 24th May, 2004 has come to the conclusion that while the enquiry was fair and proper, the findings of the enquiry officer are perverse and are not based on 'legal evidence'. The enquiry has been set aside and the parties have been directed to proceed on the rest of the issues on merits.

5. Counsel appearing on behalf of the Petitioner urged that ex facie, the appreciation of evidence by the Labour Court is perverse and the finding that there was no positive link between the workman and the suitcase which was found in his custody is one which no reasonable person could have possibly arrived at in the face of clear evidence, in the absence of cross examination on the essential part of the evidence and upon the admissions of the workman himself. On the other hand, on behalf of the First Respondent it was submitted that the findings of the Labour Court on the appreciation of the evidence are correct and do not warrant any interference.

6. In support of the charge of misconduct, the evidence that was relied upon by the management was of its Co-ordinating Officer in the traffic Department, Mr.Sebastian Fernandes. In the course of his evidence the witness deposed as follows :

> "On 24.4.95, I was present on duty in the night shift for which I had reported at 9.30 p.m. As a Co-Ordinating Officer. I am required to supervise the flights and functions of all areas which we cover such as cargo fact area, Parking area, flights and ramp area. On that day after reporting for duty I went to KLM Warehouse and thereafter I was going towards CAPL Parking Area. I reached at Parking area at about 10.10 p.m. I noticed that the Company’s tractor carrying few containers was stationed. I saw one person in company’s uniform got down from the tractor with sling bag in hand just passed ahead and disappeared in the dark. No sooner this happened I saw another person carrying a suit case in hand proceeded in the same direction. Since those persons were wearing

the company's uniform, it had created suspicion in my mind as no company workman was expected to be carrying luggage towards that area. I had followed that second man, and I saw the said person threw the suitcase in the truck which was belonging to the company. I rushed towards the said person and caught him from his back and came to know that it was Mr.Shiroshe who is sitting here. When I caught Mr.Shiroshe I had inquired with him as to from where did he get the suitcase and who was the another person. He did not give any reply to him. Since he did not give any reply to him I took him towards the watchman's cabin. While I was taking him I took him to the Security Cabin, he tried to give me certain justification but I asked him to keep quiet as he had not answered my earlier question. I then took him in the Security Cabin, in the Security Cabin a Watchman by name Mr.Bansode along with 2 more watchman. I asked Mr.Bansode to keep eye on Mr.Shiroshe and I took Mr.Gulab Ansari another watchman at the truck and asked him to keep eye on the suitcase. I then went to my office to look

out for any senior officer such as Manager or Asst. Manager in order to inform them about the incident. No senior officer was present in the office and therefore I went to the flight in search of Sr. Officers. I met Mr. Joshi, Asst. Manager at the flight. I went to the parking area where the concerned truck was parked. While Mr.Ansari was guarding near the truck he saw the sling bag was kept near the rear wheel of another van parked beside the truck, which he had showed us. Myself and Mr. Joshi then came back to our office and informed about this incident to Mr.Bharuche. He advised us to inform Mr.D'Souza over the phone about the incident. Mr.D'Souza advised Mr.Joshi to report the matter to Sahar Police Stn. so that the police may deal with the matter appropriately. Accordingly we went to the Police Stn. and reported this matter to the Inspector on duty. The said Inspector sent two police personnel with us who came to the airport in our vehicle. The police first met Mr.Shiroshe in watchman cabin, spoke to him then all of us including Mr.Shiroshe went near the truck. The police checked the tags

of the bags and after completing the procedure took the bags in their custody. We again went to the police Stn. where the zip-bag was opened by the police because they had advised us to inform the concerned airline to send the passenger for claiming the luggage. The police had recorded our statement as well. We then left the Police Stn. The Police kept the bags and Mr.Shiroshe in their custody. After coming back to my office from the police station I had prepared a return report of the incident and submitted it to Mr.Joshi.

I am now shown Exhibit-5 which I identify as my report about which I have referred now. No worker is supposed to be handling passenger's tagged baggage in the parking area, and as such the doubt was created in my mind when I had seen Mr.Shiroshe throwing the suitcase in the truck. That is all I have to say."

7. The cross examination of the witness by the defence representative is significant because there was not even a suggestion to the effect that the incident had not taken place or that the workman

was not present at the scene of the incident. The only questions that were posed were (i) whether the workman had been taken to the police under the instructions of the Manager; (ii) whether any member of the committee of the union had been informed immediately or after the incident; (iii) whether the suitcase in question was of an arriving or departing passenger; (iv) whether any security had been posted at the Conveyor belt; (v) the weight of the suitcase; and, (vi) whether all employees who have been caught committing similar thefts in the past have been handed over to the police. The evidence of the management's witness shows that he was on duty at the relevant time on 24th April, 1995; that the nature of his duties required him to supervise flights and functions of all areas including the parking area, flights and ramp area; that when he reached the parking area at about 10.10 p.m., he found a person carrying a suitcase in his hand throwing the suitcase in the truck and that the aforesaid person was the First Respondent who was immediately apprehended.

8. The First Respondent stepped into the witness box. The First Respondent in his deposition

specifically admitted his presence and the fact that he was found with a suitcase belonging to a passenger when he was apprehended by Mr.Fernandes. The defence of the workman, however, was that he had been asked by another driver, by the name of Cano to be present at a particular point and that when he had asked the aforesaid employee he was told that he would be informed of the reason he had been asked to remain present subsequently. In his deposition the workman specifically stated that when he was apprehended by the Co-ordinating Officer he did not furnish the name of the aforesaid driver nor for that matter did he inform the police of the name of this driver. His explanation was that he had not done so out of fear of the adverse consequences that would be involved if he named a co-employee. The workman was cross examined and in the course of his cross examination he admitted that his statement, Exh.8, was written voluntarily and without any pressure or undue influence. The workman admitted that the place from where the suitcase was confiscated from him was not a place where regular baggage handling work was carried out. The workman admitted that even if it was presumed that the co-employee, Cano had

carried the baggage, the workman had no reason to be present at the said spot where he had been apprehended by the management's Co-ordinating Officer.

9. The Labour Court despite the clear evidence on the record has proceeded to hold that the findings of the enquiry officer are based on conjectures and that there was no positive evidence to link the workman having carried the bag or suitcase. According to the Labour Court, there was no evidence to the effect that the workman had carried the suitcase. How the Labour Court could have arrived at this finding or the conclusion that the findings of the enquiry officer are perverse defies all explanation. The workman was specifically identified and apprehended by Mr.Fernandes, who was the Co-ordinating Officer and in charge of supervising the ground handling operations at the airport. He narrated with particularity and detail what had happened in the course of the incident and how he came to apprehend the First Respondent when he threw the suitcase in the truck which was parked in the parking area. The workman admitted in the course of his evidence that he was apprehended by

Mr.Fernandes. Similarly, he admitted that the place where the bag had been recovered was not the place where the regular baggage handling work was carried out and that he himself had no reason to be present at the spot where he was apprehended. In the face of this clear, cogent and clinching evidence, the Labour Court could not have possibly arrived at the conclusion that the findings in the enquiry are perverse. Ordinarily, this Court would be averse to interfere at the stage of a Part I award, particularly when it would still be open to the employer to lead evidence before the Labour Court in proof of the charge of misconduct. However, this is one of those exceptional cases where the award of the Labour Court suffers from a clear and patent perversity which is liable to lead to a miscarriage of justice unless corrected at this stage. The employer had in the present case held an enquiry which has been found to be fair and proper. Evidence was adduced in the course of the enquiry and when the material on the record is clear in itself to sustain the charge of misconduct, there is absolutely no necessity to now relegate the employer to once again sustain the charge of misconduct by leading fresh evidence

before the Labour Court. The entire approach of the Labour Court is contrary to settled principles in relation to the appreciation of evidence, particularly evidence which has been adduced in the course of a disciplinary enquiry. This would warrant interference under the jurisdiction of this Court under Article 226.

10. In the circumstances, the Petition is allowed. The award of the Labour Court dated 24th May, 2004 is quashed and set aside. The proceedings shall stand remitted back to the Labour Court in reference (IDA) 198 of 2001 for deciding the question as to whether the punishment which has been awarded is or is not disproportionate to the charge of misconduct which must now be regarded has having been proved at the disciplinary enquiry. The parties shall appear before the Labour Court for directions on 7th March, 2005 on which date the Labour Court shall give directions for the expeditious disposal of the reference on the remaining issue of the quantum of punishment. The Petition is accordingly disposed of in the aforesaid terms. There shall be in the circumstances no order as to costs.